

**To:** Barton, Dana[Barton.Dana@epa.gov]; Shaffer, Caleb[Shaffer.Caleb@epa.gov]  
**From:** Halsey, Ronald H  
**Sent:** Mon 4/10/2017 4:02:11 PM  
**Subject:** Leviathan Mine Site - Discussion of EPA's April 4th Letter

Dana and Caleb,

Thank you for agreeing to talk with me regarding EPA's April 4th letter. As I briefly expressed to Dana on April 6th, I was surprised by the letter and read it to be very inconsistent with our previous discussions and e-mail communications. To help you prepare for our conversations, here are the items of most concern to me.

- The letter disregards our discussions around interim deliverables. In an email sent on January 23<sup>rd</sup>, Caleb confirmed that no additional media-specific TDSRs for 2016 data would be required in June 2017, except for Floodplain soil/sediment and Reference Areas; revised TDSRs would not be submitted for surface water and groundwater; and only a "high level" RI Table of Contents was desired. Now, the April 4th letter asks for all 2016 data by June 30, 2017, four additional interim data reports within 90 days of completion of field sampling (even if lab data aren't available), and a groundwater TDSR by June 30, 2017. ARC cannot update and submit all interim deliverables referenced in this letter, respond to EPA comments on all the TDSRs, AND still deliver a DRAFT Site Characterization Report by December 31, 2017. This is not an issue about more resources. We currently have between 30 and 50 part time to full time individuals working on the various RI/FS tasks and reports. Adding additional people to report writing and data analysis only slows down the process as it takes time for people to come up to speed on this very complicated site.
- While I emphasized in January and February that we should focus on finding a path forward and not continue to look backward, a lengthy paragraph in the letter describes EPA's view that that ARC's data submission process is "unnecessarily lengthy". What the letter fails to acknowledge is EPA's role in this lengthy process when an arbitrary decision was made to throw out an EPA approved QAPP to write a new QAPP which now requires 100% data validation among other things. This level of data validation is not required in EPA's "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA, Interim Final". Nor are the countless reports, data summaries, data reviews, and other task-specific deliverables that EPA has requested over the past few years required or authorized by the 2008 Administrative Order (Order). It also fails to discuss EPA's response times which can be months and the shifting purpose of the various deliverables. I still believe that continuing to rehash this history is wasted time. Unfortunately ARC will now need to go back and better document the history with a more balanced perspective on these delays.

- The letter indicates that ARC has not provided EPA an updated Notice of Intent to Comply with the Order and requires ARC to provide such an update incorporating the schedule. This was not an agreed upon action. What I recall being discussed was a process whereby EPA would send ARC an updated Statement of Work incorporating a revised set of deliverables and schedule, and ARC would then acknowledge its agreement in an updated Notice of Intent to Comply, subject to certain caveats about scheduling uncertainty and unforeseen circumstances. EPA specifically acknowledged that the current Statement of Work is vague about deliverables and schedule, and this was one of the reasons why EPA thought that preparing a revised Statement of Work and updated Notice of Intent to Comply made sense. But this process was still being discussed, and we were still considering other possible ways to formalize the RI/FS schedule. I do not recall EPA saying that acceptance of ARC's proposed schedule was expressly "conditional on" submission of an updated Notice of Intent to Comply with the existing UAO and Statement of Work.
- Finally, I thought EPA's position was clear that a potential work takeover was not being considered or even remotely warranted for the Leviathan Mine Site. However, the letter ends with the statement: "Furthermore, if EPA finds that the December 31, 2017 submittal is incomplete or substantially unresponsive to previous EPA comments on workplans and TDSRs, or otherwise requires extensive revisions, EPA may conclude that it will be more efficient to take over the work of completing the Site Characterization Human Health and Ecological Risk Assessment." If it is truly EPA's intent to take over report writing or other tasks at this site, let's not waste any more time and get the appropriate legal teams together to start discussing that process. If EPA chooses to proceed down that path, however, it will not be because ARC has violated or refused to comply with any lawful requirement of the Order for the performance of the RI/FS.

I apologize for the length of this e-mail, but I wanted both of you to understand ARC's position and why I'm so disappointed in the letter. I think this summary will help make for a productive conversation. Thank you and I look forward to talking with both of you soon.

***Ron Halsey***

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